

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

GENERAL ELECTRIC COMPANY,)	
(f/d/b/a GE APPLIANCES DIVISION),)	
a New York Corporation,)	
)	No. 08 C 1618
Plaintiff,)	
)	
vs.)	
)	
GUINEY DELIVERY SERVICE, INC.,)	Magistrate Judge Keys
an Illinois Corporation,)	Judge Marovich
)	
Defendant.)	

**PLAINTIFF’S RESPONSE TO DEFENDANT’S
MOTION TO DISMISS, TRANSFER VENUE OR STAY**

Plaintiff, General Electric Company f/d/b/a GE Appliances Division (“GE”), by its attorneys, DiMonte & Lizak, LLC, Responds to Defendant’s, GUINEY DELIVERY SERVICE, INC., Motion to Dismiss, Transfer Venue or Stay, and states as follows:

INTRODUCTION

On March 20, 2008, GE filed a Complaint against Defendant for damages under the Carmack Amendment in the amount of \$100,059.40. GE does not dispute that the Product Home Delivery Agreement (“Delivery Agreement”) entered into by GE and Defendant requires the parties to submit to arbitration in the event they cannot resolve a dispute by negotiation. Plaintiff’s Complaint, Exhibit A. However, GE objects to the dismissal of this lawsuit as this matter should be stayed pending the outcome of the arbitration proceedings. Defendant is an Illinois corporation with both its principal place of business and its registered agent located in Arlington Heights, Illinois. The Northern district of Illinois Eastern Division is a convenient forum for Defendant, and

this matter should be stayed so the Court can monitor the parties' progress in coordinating the arbitration.

STANDARD OF REVIEW

If any suit or proceedings is brought in federal court:

upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which the suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties *stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement.* . .

9 U.S.C. § 3 (emphasis added).

ARGUMENT

This matter should be stayed pending the outcome of the arbitration proceedings to prevent the possibility of a second litigation and to monitor the arbitration.

The Seventh Circuit has held that the normal procedure when arbitrable issues arise is to stay, rather than dismiss, a lawsuit. *Tice, et. al. v. American Airlines, Inc.*, 288 F.3d, 313, 318 (7th Cir. 2002). Staying the case spares the parties the burden of a second litigation should the arbitrators fail to resolve the entire controversy. *Id.* The court emphasized that district courts in a variety of contexts should “retain jurisdiction over a suit that was interrupted for reference of an issue to another forum rather than dismiss it if, should it be dismissed, there might later be grounds for reinstating it.” *Id.* (citing *Baltimore & Ohio Chicago Terminal R.R. v. Wisconsin Central Ltd.*, 154 F.3d 404, 407-408 (7th Cir. 1998); *Richmond v. Charter*, 94 F.3d 263, 267-68 (7th Cir. 1996); *Evans Transportation Co. v. Scullin Steel Co.*, 693 F.2d 715, 717-18 (7th Cir. 1982); *Pizzo v. Belkin Van Lines Co.*, 258 F.3d 629, 634-36 (7th Cir. 2001); and *Goss Graphics Systems, Inc. v. DEV Industries, Inc.*, 267 F.3d 624, 626 (7th Cir. 2001)).

Here, GE does not dispute that the Delivery Agreement calls for the parties to resolve their disputes through arbitration if they are unable to negotiate a resolution between themselves. However, should the arbitration proceedings fail to resolve all of the issues in this lawsuit, this matter will be reinstated with the Court and further delay a final judgment. GE initiated this action in a forum convenient to Defendant, and the Court should monitor the parties' progress in coordinating and proceedings with arbitration to ensure the matter is handled expeditiously. Therefore, GE requests this matter be stayed, rather than dismissed, pending the outcome of the arbitration proceedings.

WHEREFORE, Plaintiff, General Electric Company f/d/b/a GE Appliances Division ("GE"), respectfully requests this Court deny, in part, Defendant's, GUINEY DELIVERY SERVICE, INC., Motion to Dismiss, Transfer Venue or Stay, and stay this matter pending the outcome of the arbitration proceedings.

Respectfully submitted,

General Electric Company
(f/d/b/a GE Appliances Division)

/s/ Liza B. Balistreri

By: Liza B. Balistreri, one of its attorneys

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